

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In Re:)	
)	
AREDIA and ZOMETA PRODUCTS)	No. 3:06-MDL-01760
LIABILITY LITIGATION)	Judge Campbell/Brown
(MDL No. 1760))	
)	
This Document relates to:)	
Case No. 3:06-CV-00504 (Joslin))	

TO: The Honorable Todd J. Campbell

REPORT AND RECOMMENDATION

Currently pending before the Court is the Defendant's Motion to Dismiss the claims of Plaintiff Joslin for failure to file a suggestion of death and motion for substitution. (Docket Entry 1181).

The Magistrate Judge **recommends** this motion be **denied** unless Plaintiff fails to file a motion for substitution by May 27, 2008.

As provided by the Case Management Order (CMO), Plaintiff has sixty (60) days from the date of death to file a suggestion of death. (Docket Entry 89, as modified by Docket Entry 103;). After filing the suggestion of death, the Plaintiff then has ninety (90) days to file a motion for substitution. (Docket Entry 89, as modified by Docket Entry 103; Fed. R. Civ. P. 25(a)).

Plaintiff passed away on October 21, 2007. (Docket Entry 1186). Three days after Defendant filed the instant motion, on February 25, 2008, Plaintiff filed a suggestion of death, approximately one month past the standing deadline to file a timely notification. (Docket Entry 1186). To date, Plaintiff has not filed a motion for substitution.

As continuously stressed by the Magistrate Judge, the Court must have the ability to control its docket and to have its orders obeyed. The Magistrate Judge has consistently reminded Plaintiffs' counsel of the importance of filing these motions in a timely manner as the deadlines set by the CMO are meant to keep discovery on track so that Plaintiffs' cases can proceed in a timely manner. While the Magistrate Judge notes that Plaintiff did not timely file a suggestion of death, this late filing does not overly burden the Defendant. Therefore, as outlined in the CMO, Plaintiff has from February 25, 2008, to file a motion for substitution. If Plaintiff fails to file a timely motion for substitution, the Court should then dismiss Plaintiff's case without prejudice. *Tetro v. Elliott Pophim Pontiac, Oldsmobile, Buick & GMC Trucks, Inc.*, 173 F.3d 998 (6th Cir. 1999).

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this Report and Recommendation in which to file any written objection to it with the District Court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *Thomas v. Arn*, 474 U.S. 140 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004 (en banc)).



/s/ Joe B. Brown
JOE B. BROWN
UNITED STATES MAGISTRATE JUDGE